

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3144 OF 1991

Mrs. S.B. Shendge.	..Petitioner.
Vs.	
Mrs. S.D. Mhaske.	..Respondent.

Mr. S.M. Khambete for the petitioner.

Mr. Jagdish Reddy i/by Ms.S. Mutalik for the respondent.

**CORAM : R.S. MOHITE,J.
DATED : 18.11.2005.**

P.C.

1. By this petition, the petitioner impugns an judgment and order passed by the Joint Civil Judge, J.D. Pune dated 17.12.1990 in R.C.S.No.1912 of 1989. By the impugned judgment and order, the Trial Court has decided a preliminary issue relating to the jurisdiction of the court and held that the civil court has no jurisdiction to try and entertain the suit.

2. The suit was filed by the respondent Mrs.Surekha Dattaraya Mhaske for recovery of possession of a hutment bearing Zopadi No.13536 situated in Survey No.130 within the area of Pune Municipal Corporation. It is admitted fact that the suit property has been declared to be slum area within the meaning of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act,1971. This fact has not been disputed by the advocate for the

respondent. The original defendant in the suit raised an objection relating to the jurisdiction of the civil court in view of the provisions contained in Section 42 of the aforesaid Act. He contended that under Section 42 of the Act, Civil court has no jurisdiction in respect of any matter which was required to be decided by the Administrator, Competent Authority or the Tribunal under the said Act. It was his further contention that under Section 22 of the said Act, there was a bar against proceeding for obtaining any decree or order for eviction of an occupier.

3. In the impugned judgment and order, issue of jurisdiction was decided against the petitioner on the footing that the suit had been filed against a trespasser and the trespasser could not be said to be an occupier within the meaning of Section 2(e) of the said Act.

4. I am of the view that the finding of the Trial Court is incorrect. Section 2(e)(v) indicates that an occupier includes any persons who is liable to pay damages for the use and occupation of any land or building. The trespasser is a person who would be liable to pay the damages for wrongful use of the land. The issue in question has been decided by the Division

Bench of this court in the case of **Taj Mohd. Yakub Vs. Abdul Gani Bhikan** reported in 1991 Mah.L.J. 263. By overruling the judgment of the Single Judge of this court, the Division Bench observed that a person who wrongfully uses land or building is liable to pay damages for the use and occupation of such land and building. The trespasser is a person who is liable to pay to the owner damages for the use and occupation of any land or building. A trespasser in occupation is an occupier within the definition of occupier under Section 2(e)(v) of the Maharashtra Slum Areas(Improvement, Clearance and Redevelopment) Act.

5. In this view of the matter, rule in the petition is made absolute in terms of prayer clause (b). Petition disposed of accordingly.

(R. S. MOHITE, J.)